U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31936541

Date: AUG. 15, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability, as the co-founder and head of engineering of an information technology development firm. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the required initial evidentiary criteria, he did not demonstrate that he enjoys sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. Specifically, the decision lacks analysis and discussion of the evidence in the record with respect to the Petitioner's eligibility as an individual of extraordinary ability. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics as demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an entrepreneur engaged as the co-founder and head of engineering for a firm that specializes in the strategic management and development of cloud networks, distributed computing strategies, data analytics, and artificial intelligence (AI) business intelligence technologies (the Petitioner's technological areas of interest). He intends to continue working for his current employer or elsewhere in a similar capacity should this petition be approved.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner filed this petition on September 11, 2023, and must established his eligibility for this highly restrictive visa classification as of that date. 8 C.F.R. § 103.2(b)(1). The Petitioner claims throughout this proceeding that he satisfies six of these criteria:

- (iii), published material about the individual in professional or major media (published material)
- (iv), participation as a judge of the work of others in the same or allied field of specification for which classification is sought (judging)
- (v), original contributions of major significance in the field (original major contributions)
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media (scholarly articles)
- (viii), Performed in a leading or critical role for organizations or establishments with a distinguished reputation (leading or critical role)
- (ix), Commanded a high salary or other significant high remuneration for services, in relation to others in the field (high salary)

The Director denied the petition, concluding that while the Petitioner met the plain language requirements of four of these criteria, (judging, scholarly articles, leading or critical role, and high salary), he did not meet the other two criteria (published material, original major contributions). The

Director also concluded the record did not show the Petitioner warranted favorable consideration in a final merits determination.

On appeal, the Petitioner asserts among other things, that the Director failed to evaluate all the relevant evidence in determining that he did not warrant favorable consideration in the final merits determination. He alleges that the Director ignored "key details" offered in the submitted evidence. A decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). For the following reasons, we agree with the Petitioner that the Director's decision is deficient.

In response to the Director's request for evidence (RFE), the Petitioner explained that he was "a leading technologist/engineer and entrepreneur [who] has made original impactful contributions to [the Petitioner's technological areas of interest]," noting:

- [He] has been the co-founder & head of engineering at [N-], a company that has attracted over $17.5 million in funding while also revolutionizing the product analytics field with its proprietary AI-enhanced business intelligence platform/product that [the Petitioner] strategically managed the development of.

- Before co-founding [N-], [he] was already highly regarded for his contributions as the founding engineer at the high-tech company [T-] where he helped build this company's technological platform and is listed as an inventor on multiple patents.

- Prior to working for [T-], [he] worked as a software engineer for [G-] on [its] front end (GFE) team where he contributed to the initial implementation of [G-'s] QUIC protocol, technologies that laid the groundwork for http3.

The Petitioner provided detailed exhibit listings that referenced the evidence submitted to substantiate the significance of his managerial accomplishments and technical innovations, initially, in response to the RFE, (and in the appeal brief).

The Director concluded, among other things, in the denial:

> The Petitioner provided letters praising the work he has done for two employers. These letters came from co-workers or clients of these companies. The Petitioner did not provide any evidence suggesting that he is well known outside his existing corporate relationships. He did not provide any evidence suggesting that he is well-known in his field as a result of the work he had done with these employers.
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> The Petitioner has provided evidence showing a working engineer who has been lucky enough to be associated with two startups that have garnered venture capital funding. The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria

> describe types of evidence that one may submit, but it does not follow that every engineer who has secured a patent or who has earned the respect of his colleagues is among the small percentage at the very top of the field.

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). Here, the conclusory statements offered by the Director as reasons for denying the final merits aspect of the petition, such as the passages from the denial quoted above, do not provide a sufficient reasoned consideration to the petition, or make adequate findings, based on the evidence submitted.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Although the Director briefly mentioned and discussed some of the types of evidence submitted by the Petitioner in their final merits determination, and concluded that they were insufficient, the decision does not adequately explain why the Petitioner's evidence was deficient to support his claim that he is an individual of extraordinary ability.

We withdraw the Director's decision and remand the matter for further review and entry of a new decision. Because the Director determined the Petitioner has established his qualifications under at least three criteria at 8 C.F.R. § 204.5(h)(3), on remand, the Director should conduct a final merits review of the evidence of record. The Petitioner seeks a highly restrictive visa classification, intended for the handful of individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). As contemplated by Congress, the Petitioner must demonstrate the required sustained national or international acclaim, consistent with a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, his status as one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.